

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1086**

**Introduced by Assembly Member Calderon**

February 25, 1999

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An act to amend Sections ~~3706, 5002~~ 4061, 4062, 5310, 5311, 5313, 5500.3, 5502, 5502.5, 5702, and 5905 of, ~~and to add Section 5904.5 to,~~ to add Sections 4600.1, 4616, and 5904.5 to, and to repeal Section 4062.9 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1086, as amended, Calderon. Workers' compensation: judges: procedure.

~~(1) Existing law permits an employee to bring an action against an employer for damages if the employer fails to secure the payment of compensation.~~

~~This bill would require a finding by the administrative director that an employer has not secured the payment of compensation, as specified, before an action could be brought against an employer.~~

~~(2)~~

~~(1) Existing law with respect to disability indemnity under the workers' compensation laws benefits provides a comprehensive scheme with respect to medical evaluations.~~

~~This bill would make various revisions to provisions governing selection of qualified medical evaluators, and related attorney representation, as specified.~~

(2) Existing law provides that in cases where an additional comprehensive medical evaluation is obtained, the findings of the treating physician are presumed correct.

*This bill would delete that provision.*

(3) Existing law authorized an injured employee to select a treating physician in certain instances.

*This bill would require the physician or facility chosen by an employee to comply with certain specified requirements.*

*The bill would state legislative intent.*

(4) Existing law authorizes the Workers' Compensation Appeals Board of the Division of Workers' Compensation to appoint one or more workers' compensation administrative law judges.

This bill would prescribe the qualifications that must be met by workers' compensation administrative law judges prior to their appointment.

~~(3)~~

(5) Existing law establishes procedures for workers' compensation judges to conduct worker compensation hearings, including the requirement of a mandatory settlement conference, and the procedures for parties to file, and for the Workers' Compensation Appeals Board of the Division of Workers' Compensation to hear, petitions for reconsideration, removal, and disqualification.

This bill would make changes in the procedures for workers' compensation administrative law judges to conduct worker compensation hearings, including making a settlement conference permissive, requiring that petitions for reconsideration, removal, and disqualification be referred to the workers' compensation administrative law judges from whose decisions or actions relief is sought, and permitting the applicable workers' compensation administrative law judge to prepare and submit a report to the appeals board on these petitions.

~~(4)~~

(6) Existing law permits a workers' compensation administrative law judge to grant a continuance of any conference or hearing upon a showing of good cause.

This bill would require a workers' compensation administrative law judge who grants a continuance to report



each continuance to the Administrative Director of the Division of Workers' Compensation on a form prescribed by the appeals board, and would require the director to publish annually a report on the number and length of continuances granted by each Workers' Compensation Appeals Board local office.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1. Section 3706 of the Labor Code is~~  
2 ~~amended to read:~~

3 ~~3706. Upon a finding by the administrative director~~  
4 ~~that an employer has not secured the payment of~~  
5 ~~compensation pursuant to Section 3700, any injured~~  
6 ~~employee or his or her dependents may bring an action~~  
7 ~~at law against the employer for damages, as if this division~~  
8 ~~did not apply.~~

9 ~~SEC. 2. Section 5002 of the Labor Code is amended to~~  
10 ~~read:~~

11 ~~5002. A copy of the release or compromise agreement~~  
12 ~~signed by both parties shall forthwith be filed with the~~  
13 ~~appeals board. Upon filing with and approval by the~~  
14 ~~appeals board, it may, without notice, of its own motion~~  
15 ~~or on the application of either party, enter its award based~~  
16 ~~upon the release or compromise agreement. If both~~  
17 ~~parties are represented by an attorney, the appeals board~~  
18 ~~shall approve without alteration or modification the~~  
19 ~~release or compromise agreement and enter its award~~  
20 ~~based upon the release or compromise agreement.~~

21 ~~SECTION 1. Section 4061 of the Labor Code is~~  
22 ~~amended to read:~~

23 ~~4061. (a) Together with the last payment of~~  
24 ~~temporary disability indemnity, the employer shall, in a~~  
25 ~~form prescribed by the administrative director pursuant~~  
26 ~~to Section 138.4, provide the employee one of the~~  
27 ~~following:~~

28 ~~(1) Notice either that no permanent disability~~  
29 ~~indemnity will be paid because the employer alleges the~~

1 employee has no permanent impairment or limitations  
2 resulting from the injury or notice of the amount of  
3 permanent disability indemnity determined by the  
4 employer to be payable. The notice shall include  
5 information concerning how the employee may obtain a  
6 formal medical evaluation pursuant to subdivision (c) if  
7 he or she disagrees with the position taken by the  
8 employer. If the employer determines permanent  
9 disability indemnity is payable, the employer shall advise  
10 the employee of the amount determined payable and the  
11 basis on which the determination was made and whether  
12 there is need for continuing medical care.

13 (2) Notice that permanent disability indemnity may  
14 be or is payable, but that the amount cannot be  
15 determined because the employee's medical condition is  
16 not yet permanent and stationary. The notice shall advise  
17 the employee that his or her medical condition will be  
18 monitored until it is permanent and stationary, at which  
19 time the necessary evaluation will be performed to  
20 determine the existence and extent of permanent  
21 impairment and limitations for the purpose of rating  
22 permanent disability and to determine the need for  
23 continuing medical care, or at which time the employer  
24 will advise the employee of the amount of permanent  
25 disability indemnity the employer has determined to be  
26 payable. If an employee is provided notice pursuant to  
27 this paragraph and the employer later takes the position  
28 that the employee has no permanent impairment or  
29 limitations resulting from the injury, or later determines  
30 permanent disability indemnity is payable, the employer  
31 shall in either event, within 14 days of the determination  
32 to take either position, provide the employee with the  
33 notice specified in paragraph (1).

34 (b) Each notice required by subdivision (a) shall  
35 describe the administrative procedures available to the  
36 injured employee and advise the employee of his or her  
37 right to consult an information and assistance officer or an  
38 attorney. It shall contain the following language:

39 "Should you decide to be represented by an attorney,  
40 you may or may not receive a larger award, but, unless

1 you are determined to be ineligible for an award, the  
2 attorney's fee will be deducted from any award you might  
3 receive for disability benefits. The decision to be  
4 represented by an attorney is yours to make, but it is  
5 voluntary and may not be necessary for you to receive  
6 your benefits."

7 (c) If the parties do not agree to a permanent disability  
8 rating based on the treating physician's evaluation or the  
9 assessment of need for continuing medical care, and the  
10 employee is represented by an attorney, the employer  
11 shall seek agreement with the employee on a physician to  
12 prepare a comprehensive medical evaluation of the  
13 employee's permanent impairment and limitations and  
14 any need for continuing medical care resulting from the  
15 injury. If no agreement is reached within 10 days, or any  
16 additional time not to exceed 20 days agreed to by the  
17 parties, the parties may not later select an agreed medical  
18 evaluator. Evaluations of an employee's permanent  
19 impairment and limitations obtained prior to the period  
20 to reach agreement shall not be admissible in any  
21 proceeding before the appeals board. After the period to  
22 reach agreement has expired, either party may select a  
23 qualified medical evaluator to conduct the  
24 comprehensive medical evaluation. Neither party may  
25 obtain more than one comprehensive medical-legal  
26 report, provided, however, that any party may obtain  
27 additional reports at their own expense.

28 (d) If the parties do not agree to a permanent  
29 disability rating based on the treating physician's  
30 evaluation, and if the employee is not represented by an  
31 attorney, the employer shall not seek agreement with the  
32 employee on a physician to prepare an additional medical  
33 evaluation. The employer shall immediately provide the  
34 employee with a form prescribed by the medical director  
35 with which to request assignment of a panel of three  
36 qualified medical evaluators. ~~—The~~ *Within 30 days of*  
37 *receipt by the employee of the names of the three*  
38 *qualified medical evaluators assigned to the panel, the*  
39 employee shall select a physician from the panel to  
40 prepare a medical evaluation of the employee's

1 permanent impairment and limitations and any need for  
2 continuing medical care resulting from the injury. *If the*  
3 *employee fails to select a physician within 30 days of*  
4 *receipt by the employee of the names of the three*  
5 *qualified medical evaluators assigned to the panel, the*  
6 *first assigned physician to the panel shall be deemed to be*  
7 *the employee's selection from the panel.*

8 The report of the qualified medical evaluator and the  
9 reports of the treating physician or physicians shall be the  
10 only admissible reports and shall be the only reports  
11 obtained by the employee or the employer on the issues  
12 subject to this section. If the employee has received a  
13 comprehensive medical-legal evaluation under this  
14 subdivision, and he or she later becomes represented by  
15 an attorney, he or she shall ~~not~~ be entitled to an additional  
16 evaluation. ~~In no event shall the~~ *The employer shall also*  
17 *be entitled to obtain another report in these cases when*  
18 *the employee later becomes represented by an attorney.*

19 (e) The represented employee shall be responsible for  
20 making an appointment with an agreed medical  
21 evaluator.

22 (f) The unrepresented employee shall be responsible  
23 for making an appointment with a qualified medical  
24 evaluator selected from a panel of three qualified medical  
25 evaluators. The evaluator shall give the employee, at the  
26 appointment, a brief opportunity to ask questions  
27 concerning the evaluation process and the evaluator's  
28 background. The unrepresented employee shall then  
29 participate in the evaluation as requested by the  
30 evaluator unless the employee has good cause to  
31 discontinue the evaluation. For purposes of this  
32 subdivision, "good cause" shall include evidence that the  
33 evaluator is biased against the employee because of his or  
34 her race, sex, national origin, religion, or sexual  
35 preference or evidence that the evaluator has requested  
36 the employee to submit to an unnecessary medical  
37 examination or procedure. If the unrepresented  
38 employee declines to proceed with the evaluation, he or  
39 she shall have the right to a new panel of three qualified  
40 medical evaluators from which to select one to prepare

1 a comprehensive medical evaluation. If the appeals board  
2 subsequently determines that the employee did not have  
3 good cause to not proceed with the evaluation, the cost  
4 of the evaluation shall be deducted from any award the  
5 employee obtains.

6 (g) Upon selection or assignment pursuant to  
7 subdivision (c) or (d), the medical evaluator shall  
8 perform a comprehensive medical evaluation according  
9 to the procedures promulgated by the Industrial Medical  
10 Council under paragraphs (2) and (3) of subdivision (j)  
11 of Section 139.2 and summarize the medical findings on  
12 a form prescribed by the Industrial Medical Council. The  
13 comprehensive medical evaluation shall address all  
14 contested medical issues arising from all injuries reported  
15 on one or more claim forms prior to the date of the  
16 employee's initial appointment with the medical  
17 evaluator. If, after a comprehensive medical evaluation is  
18 prepared, the employer or the employee subsequently  
19 objects to any new medical issue, the parties, to the extent  
20 possible, shall utilize the same medical evaluator who  
21 prepared the previous evaluation to resolve the medical  
22 dispute.

23 (h) Except as provided in Section 139.3, the medical  
24 evaluator may obtain consultations from other physicians  
25 who have treated the employee for the injury whose  
26 expertise is necessary to provide a complete and accurate  
27 evaluation.

28 (i) The qualified medical evaluator who has evaluated  
29 an unrepresented employee shall serve the  
30 comprehensive medical evaluation and the summary  
31 form on the employee, employer, and the administrative  
32 director. The unrepresented employee or the employer  
33 may submit the treating physician's evaluation for the  
34 calculation of a permanent disability rating. Within 20  
35 days of receipt of the comprehensive medical evaluation,  
36 the administrative director shall calculate the permanent  
37 disability rating according to Section 4660 and serve the  
38 rating on the employee and employer.

39 (j) Any comprehensive medical evaluation  
40 concerning an unrepresented employee which indicates

1 that part or all of an employee's permanent impairment  
2 or limitations may be subject to apportionment pursuant  
3 to Sections 4663 or 4750 shall first be submitted by the  
4 administrative director to a workers' compensation judge  
5 who may refer the report back to the qualified medical  
6 evaluator for correction or clarification if the judge  
7 determines the proposed apportionment is inconsistent  
8 with the law.

9 (k) Within 30 days of receipt of the rating, if the  
10 employee is unrepresented, the employee or employer  
11 may request that the administrative director reconsider  
12 the recommended rating or obtain additional  
13 information from the treating physician or medical  
14 evaluator to address issues not addressed or not  
15 completely addressed in the original comprehensive  
16 medical evaluation or not prepared in accord with the  
17 procedures of the Industrial Medical Council  
18 promulgated under paragraph (2) or (3) of subdivision  
19 (j) of Section 139.2. This request shall be in writing, shall  
20 specify the reasons the rating should be reconsidered, and  
21 shall be served on the other party. If the administrative  
22 director finds the comprehensive medical evaluation is  
23 not complete or not in compliance with the required  
24 procedures, the administrative director shall return the  
25 report to the treating physician or qualified medical  
26 evaluator for appropriate action as the administrative  
27 director instructs. Upon receipt of the treating  
28 physician's or qualified medical evaluator's final  
29 comprehensive medical evaluation and summary form,  
30 the administrative director shall recalculate the  
31 permanent disability rating according to Section 4660 and  
32 serve the rating, the comprehensive medical evaluation,  
33 and the summary form on the employee and employer.

34 (l) If a comprehensive medical evaluation from the  
35 treating physician or an agreed medical evaluator or a  
36 qualified medical evaluator selected from a  
37 three-member panel resolves any issue so as to require an  
38 employer to provide compensation, the employer shall  
39 commence the payment of compensation or promptly  
40 commence proceedings before the appeals board to



1 resolve the dispute. If the employee and employer agree  
2 to a stipulated findings and award as provided under  
3 Section 5702 or to compromise and release the claim  
4 under Chapter 2 (commencing with Section 5000) of Part  
5 3, or if the employee wishes to commute the award under  
6 Chapter 3 (commencing with Section 5100) of Part 3, the  
7 appeals board shall first determine whether the  
8 agreement or commutation is in the best interests of the  
9 employee and whether the proper procedures have been  
10 followed in determining the permanent disability rating.  
11 The administrative director shall promulgate a form to  
12 notify the employee, at the time of service of any rating  
13 under this section, of the options specified in this  
14 subdivision, the potential advantages and disadvantages  
15 of each option, and the procedure for disputing the  
16 rating.

17 (m) No issue relating to the existence or extent of  
18 permanent impairment and limitations or the need for  
19 continuing medical care resulting from the injury may be  
20 the subject of a declaration of readiness to proceed unless  
21 there has first been a medical evaluation by a treating  
22 physician or an agreed or qualified medical evaluator.  
23 With the exception of an evaluation or evaluations  
24 prepared by the treating physician or physicians, no  
25 evaluation of permanent impairment and limitations or  
26 need for continuing medical care resulting from the  
27 injury shall be obtained prior to service of the  
28 comprehensive medical evaluation on the employee and  
29 employer if the employee is unrepresented, or prior to  
30 the attempt to select an agreed medical evaluator if the  
31 employee is represented. Evaluations obtained in  
32 violation of this prohibition shall not be admissible in any  
33 proceeding before the appeals board. However, the  
34 testimony, records, and reports offered by the treating  
35 physician or physicians who treated the employee for the  
36 injury and comprehensive medical evaluations prepared  
37 by a qualified medical evaluator selected by an  
38 unrepresented employee from a three-member panel  
39 shall be admissible.

1     *SEC. 2. Section 4062 of the Labor Code is amended to*  
2     *read:*

3     4062. (a) If either the employee or employer objects  
4     to a medical determination made by the treating  
5     physician concerning the permanent and stationary  
6     status of the employee's medical condition, the  
7     employee's preclusion or likely preclusion to engage in  
8     his or her usual occupation, the extent and scope of  
9     medical treatment, the existence of new and further  
10    disability, or any other medical issues not covered by  
11    Section 4060 or 4061, the objecting party shall notify the  
12    other party in writing of the objection within 20 days of  
13    receipt of the report if the employee is represented by an  
14    attorney or within 30 days of receipt of the report if the  
15    employee is not represented by an attorney. These time  
16    limits may be extended for good cause or by mutual  
17    agreement. If the employee is represented by an  
18    attorney, the parties shall seek agreement with the other  
19    party on a physician, who need not be a qualified medical  
20    evaluator, to prepare a report resolving the disputed  
21    issue. If no agreement is reached within 10 days, or any  
22    additional time not to exceed 20 days agreed upon by the  
23    parties, the parties may ~~not~~ later select an agreed medical  
24    evaluator. Evaluations obtained prior to the period to  
25    reach agreement shall not be admissible in any  
26    proceeding before the appeals board. After the period to  
27    reach agreement has expired, the objecting party may  
28    select a qualified medical evaluator to conduct the  
29    comprehensive medical evaluation. Neither party may  
30    obtain more than one comprehensive medical-legal  
31    report, provided, however, that any party may obtain  
32    additional reports at their own expense. The  
33    nonobjecting party may continue to rely on the treating  
34    physician's report or may select a qualified medical  
35    evaluator to conduct an additional evaluation.

36    (b) If the employee is not represented by an attorney,  
37    the employer shall not seek agreement with the  
38    employee on a physician to prepare the comprehensive  
39    medical evaluation. The employer shall immediately  
40    provide the employee with a form prescribed by the

1 medical director with which to request assignment of a  
 2 panel of three qualified medical evaluators. The  
 3 employee shall select a physician from the panel to  
 4 prepare a comprehensive medical evaluation. The  
 5 evaluation of the qualified medical evaluator—selected  
 6 ~~from a panel of three~~ and the reports of the treating  
 7 physician or physicians shall be the only admissible  
 8 reports and shall be the only reports obtained by the  
 9 employee or employer on issues subject to this section in  
 10 a case involving an unrepresented employee. If the  
 11 employee has received a comprehensive medical-legal  
 12 evaluation under this subdivision, and he or she later  
 13 becomes represented by an attorney, he or she shall ~~not~~  
 14 be entitled to an additional evaluation. *When the*  
 15 *employee becomes represented by an attorney, the*  
 16 *employer shall also be entitled to an additional*  
 17 *evaluation.*

18 (c) Upon completing a determination of the disputed  
 19 medical issue, the physician selected under subdivision  
 20 (a) or (b) to perform the medical evaluation shall  
 21 summarize the medical findings on a form prescribed by  
 22 the Industrial Medical Council and shall serve the formal  
 23 medical evaluation and the summary form on the  
 24 employee, employer, and administrative director. The  
 25 medical evaluation shall address all contested medical  
 26 issues arising from all injuries reported on one or more  
 27 claim forms prior to the date of the employee's initial  
 28 appointment with the medical evaluator. If, after a  
 29 medical evaluation is prepared, the employer or the  
 30 employee subsequently objects to any new medical issue,  
 31 the parties, to the extent possible, shall utilize the same  
 32 medical evaluator who prepared the previous evaluation  
 33 to resolve the medical dispute.

34 (d) No disputed medical issue specified in subdivision  
 35 (a) may be the subject of a declaration of readiness to  
 36 proceed unless there has first been an evaluation by the  
 37 treating physician or an agreed or qualified medical  
 38 evaluator.

39 (e) With the exception of a report or reports prepared  
 40 by the treating physician or physicians, no report

1 determining disputed medical issues set forth in  
2 subdivision (a) shall be obtained prior to the expiration  
3 of the period to reach agreement on the selection of an  
4 agreed medical evaluator under subdivision (a). Reports  
5 obtained in violation of this prohibition shall not be  
6 admissible in any proceeding before the appeals board.  
7 However, the testimony, records, and reports offered by  
8 the treating physician or physicians who treated the  
9 employee for the injury shall be admissible.

10 *SEC. 3. Section 4062.9 of the Labor Code is repealed.*

11 ~~4062.9. In cases where an additional comprehensive~~  
12 ~~medical evaluation is obtained under Section 4061 or~~  
13 ~~4062, the findings of the treating physician are presumed~~  
14 ~~to be correct. This presumption is rebuttable and may be~~  
15 ~~controverted by a preponderance of medical opinion~~  
16 ~~indicating an different level of impairment. However,~~  
17 ~~this presumption shall not apply where both parties select~~  
18 ~~qualified medical examiners.~~

19 *SEC. 4. Section 4600.1 is added to the Labor Code, to*  
20 *read:*

21 *4600.1. The physician or facility chosen by the*  
22 *employee who undertakes to provide treatment pursuant*  
23 *to Section 4600 shall do the following:*

24 *(a) Within three working days after undertaking to*  
25 *provide that treatment notify the employer of the name*  
26 *and address of the treating physician or facility.*

27 *(b) Within five working days following initial*  
28 *examination submit a written report to the employer to*  
29 *include:*

30 *(1) The name and address of injured employee.*

31 *(2) The employee's medical history as obtained by the*  
32 *physician, including any significant prior injuries or*  
33 *disabilities.*

34 *(3) Findings on examination, including the objective*  
35 *findings, the subjective complaints reported by the*  
36 *employee, and the diagnosis, including any applicable*  
37 *ICD-9-M Number.*

38 *(4) The planned course, scope, frequency and*  
39 *duration of treatment, including an estimated date of*  
40 *completion of treatment.*

1 (5) If appropriate, the estimated return-to-work date  
2 for regular or modified work.

3 (6) An opinion as to whether residual permanent  
4 disability is to be anticipated and, if possible, an estimate  
5 of its extent.

6 (7) An opinion as to whether the employee will  
7 eventually be able to engage in the occupation being  
8 performed at the time of injury.

9 Information required under this subdivision which is  
10 included in a "Doctor's First Report of Occupational  
11 Injury or Illness" may be supplied by attaching a copy of  
12 this form to the report.

13 (c) Submit progress reports no less frequently than  
14 every 45 days or 12 visits with the physician or a provider  
15 prescribed by the physician, whichever occurs first, in the  
16 form and manner prescribed by the administrative  
17 director.

18 (d) Report promptly to the employer when:

19 (1) The employee's condition permits return to  
20 modified or regular work.

21 (2) The employee's condition requires him or her to  
22 leave work.

23 (3) Hospitalization or surgery is indicated or  
24 recommended.

25 (4) The employee's condition becomes permanent  
26 and stationary.

27 (5) The employee's condition undergoes a previously  
28 unexpected significant change or there is any significant  
29 change in the treatment plan reported under paragraph  
30 (4) of subdivision (b) which has changed, including any  
31 change in the proposed course, scope, frequency and  
32 duration of treatment and estimated date of completion  
33 of treatment.

34 (6) The employee is referred to another physician for  
35 consultation.

36 (7) The employer reasonably requests additional  
37 appropriate information.

38 (8) The physician concludes that the employee's  
39 permanent disability precludes, or is likely to preclude,  
40 the employee from engaging in the employee's usual

1 *occupation or the occupation in which the employee was*  
2 *engaged at the time of the injury, as required pursuant to*  
3 *subdivision (b) of Section 4636.*

4 *(e) When required under Section 4636, provide a*  
5 *report of findings of permanent disability.*

6 *(f) Any controversies concerning this section shall be*  
7 *resolved pursuant to Section 4603 or 4604, whichever is*  
8 *appropriate.*

9 *SEC. 5. Section 4616 is added to the Labor Code, to*  
10 *read:*

11 *4616. It is the intent of the Legislature that no law*  
12 *affecting medical care provided by health care service*  
13 *plans licensed under the Knox-Keene Health Care*  
14 *Service Plan Act of 1975 shall modify, amend, or restrict*  
15 *the rights and obligations of employers and workers*  
16 *under Division 4 (commencing with Section 3200) and*  
17 *4.5 (commencing with Section 6100) of this code unless*  
18 *the law specifically states its intent to do so.*

19 ~~SEC. 3.~~

20 *SEC. 6. Section 5310 of the Labor Code is amended to*  
21 *read:*

22 *5310. (a) The appeals board may appoint one or*  
23 *more workers' compensation administrative law judges*  
24 *in any proceeding, as it may deem necessary or advisable,*  
25 *and may refer, remove to itself, or transfer to a workers'*  
26 *compensation administrative law judge the proceedings*  
27 *on any claim. The administrative director may appoint*  
28 *workers' compensation administrative law judges. Any*  
29 *workers' compensation administrative law judge*  
30 *appointed by the administrative director has the powers,*  
31 *jurisdiction, and authority granted by law, by the order of*  
32 *appointment, and by the rules of the appeals board.*

33 *(b) All workers' compensation administrative law*  
34 *judges shall be attorneys licensed to practice law in*  
35 *California for five or more years prior to his or her*  
36 *appointment. All workers' compensation administrative*  
37 *law judges shall have prior to appointment five or more*  
38 *years of experience in the litigation of workers'*  
39 *compensation cases.*

40 ~~SEC. 4.~~

1     *SEC. 7.* Section 5311 of the Labor Code is amended to  
2 read:

3     5311. Any party to the proceeding may object to the  
4 reference of the proceeding to a particular workers'  
5 compensation administrative law judge upon any one or  
6 more of the grounds specified in Section 641 of the Code  
7 of Civil Procedure. Proceedings before the challenged  
8 workers' compensation administrative law judge shall be  
9 stayed until the appeals board rules on the objection. The  
10 objection shall be heard and disposed of by the appeals  
11 board within 30 days after the objection is filed. Affidavits  
12 may be read and witnesses examined as to the objections.

13     ~~*SEC. 5.*~~

14     *SEC. 8.* Section 5313 of the Labor Code is amended to  
15 read:

16     5313. The appeals board or the workers'  
17 compensation administrative law judge shall, within 30  
18 days after the case is submitted, make and file findings  
19 upon all facts involved in the controversy, conclusions of  
20 law upon all legal issues involved in the controversy, and  
21 an award, order, or decision stating the determination as  
22 to the rights of the parties. Together with the findings,  
23 conclusions, decision, order, or award there shall be  
24 served upon all the parties to the proceedings the reasons  
25 or grounds upon which the determination was made. The  
26 workers' compensation administrative law judge shall  
27 immediately report to the administrative director any  
28 findings, conclusions, decision, or order that was not filed  
29 in accordance with this section.

30     ~~*SEC. 6.*~~

31     *SEC. 9.* Section 5500.3 of the Labor Code is amended  
32 to read:

33     5500.3. The appeals board shall establish uniform  
34 court procedures, uniform forms, and uniform time of  
35 court settings for all offices of the appeals board. No local  
36 office of the appeals board or workers' compensation  
37 administrative law judge shall require forms or  
38 procedures other than as established by the appeals  
39 board.



1 A workers' compensation administrative law judge  
2 who promulgates or utilizes any local court procedure,  
3 local form, or local rule in contravention of this section  
4 shall be subject to disqualification pursuant to Section  
5 5311 upon petition to the appeals board by any party to  
6 the proceeding.

7 ~~SEC. 7.~~

8 *SEC. 10.* Section 5502 of the Labor Code is amended  
9 to read:

10 5502. (a) Except as provided in subdivisions (b) and  
11 (d), the hearing shall be held not less than 10 days, and  
12 not more than 60 days, after the date a declaration of  
13 readiness to proceed, on a form prescribed by the  
14 Workers' Compensation Appeals Board, is filed. Where a  
15 claim form has been filed for an injury occurring on or  
16 after January 1, 1990, and before January 1, 1994, an  
17 application for adjudication shall accompany the  
18 declaration of readiness to proceed.

19 (b) The administrative director shall establish a  
20 priority calendar for issues requiring an expedited  
21 hearing and decision. A hearing shall be held and a  
22 determination as to the rights of the parties shall be made  
23 and filed within 30 days after the declaration of readiness  
24 to proceed is filed if the issues in dispute are any of the  
25 following:

26 (1) The employee's entitlement to medical treatment  
27 pursuant to Section 4600.

28 (2) The employee's entitlement to, or the amount of,  
29 temporary disability indemnity payments.

30 (3) The employee's entitlement to vocational  
31 rehabilitation services, or the termination of an  
32 employer's liability to provide these services to an  
33 employee.

34 (4) The employee's entitlement to compensation from  
35 one or more responsible employers when two or more  
36 employers dispute liability as among themselves.

37 (5) Any other issues requiring an expedited hearing  
38 and determination as prescribed in rules and regulations  
39 of the administrative director.



(c) The administrative director shall report quarterly to the Governor and to the Legislature concerning the frequency and types of issues which are not heard and decided within the period prescribed in this section and the reasons therefor.

(d) (1) In all cases, *if the parties cannot agree on the type of conference or trial to be scheduled, a mandatory* a settlement conference ~~may~~ *shall* be conducted not less than 10 days, and not more than 30 days, after the filing of a declaration of readiness to proceed. If the dispute is not resolved, the regular hearing shall be held within 75 days after the declaration of readiness to proceed is filed.

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. ~~At the settlement conference all conferences,~~ the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and if the dispute cannot be resolved, to frame the issues and stipulations for trial. The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the *mandatory* settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date *of the mandatory settlement conference or as otherwise* determined by the referee or workers' compensation administrative law judge.

(e) *In cases involving the Director of the Department of Industrial Relations in his or her capacity as administrator of the Uninsured Employers Fund, this*

1 *section shall not apply unless proof of service, as specified*  
2 *in paragraph (1) of subdivision (d) of Section 3716, has*  
3 *been filed with the appeals board and provided to the*  
4 *Director of Industrial Relations, valid jurisdiction has*  
5 *been established over the employer, and the fund has*  
6 *been joined.*

7 (e) Except as provided in subdivision (a) and in  
8 Section 4065, the provisions of this section shall apply  
9 irrespective of the date of injury.

10 ~~SEC. 8.~~

11 *SEC. 11.* Section 5502.5 of the Labor Code is amended  
12 to read:

13 5502.5. A continuance of any conference or hearing  
14 required by Section 5502 shall not be favored, but may be  
15 granted by a workers' compensation administrative law  
16 judge upon any terms as are just upon a showing of good  
17 cause. When determining a request for continuance, the  
18 workers' compensation administrative law judge shall  
19 take into consideration the complexity of the issues, the  
20 diligence of the parties, and the prejudice incurred on the  
21 part of any party by reasons of granting or denying a  
22 continuance.

23 The workers' compensation administrative law judge  
24 who grants a continuance shall report to the  
25 administrative director, on a form prescribed by the  
26 Workers' Compensation Appeals Board, each  
27 continuance, the identity of the party requesting the  
28 continuance, the reason for the continuance, the position  
29 of each party with respect to granting the continuance  
30 and the length of the continuance. The administrative  
31 director shall publish annually a report on the number  
32 and length of continuances granted by each Workers'  
33 Compensation Appeals Board local office.

34 ~~SEC. 9.~~ ~~Section 5702 of the Labor Code is amended to~~  
35 ~~read:~~

36 ~~5702. The parties to a controversy may stipulate the~~  
37 ~~facts relative thereto in writing and file such stipulation~~  
38 ~~with the appeals board. The appeals board may~~  
39 ~~thereupon make its findings and award based upon such~~  
40 ~~stipulation, or may set the matter down for hearing and~~

~~take further testimony or make the further investigation necessary to enable it to determine the matter in controversy. If both parties are represented by an attorney, the appeals board shall make its findings and award based upon the stipulation of facts without alteration or modification and no hearing or further testimony or further investigation shall be conducted.~~

~~SEC. 10.~~

*SEC. 12.* Section 5904.5 is added to the Labor Code, to read:

5904.5. Upon the request by any party to a proceeding, and upon payment of a deposit fee, the workers' compensation administrative law judge shall order prepared a transcript of testimony or other proceedings of record.

~~SEC. 11.~~

*SEC. 13.* Section 5905 of the Labor Code is amended to read:

5905. (a) A copy of the petition for reconsideration shall be served forthwith upon all adverse parties by the person petitioning for reconsideration. Any adverse party may file an answer thereto within 10 days thereafter. The answer shall likewise be verified. The appeals board may require the petition for reconsideration to be served on other persons designated by it.

(b) Petitions for reconsideration, petitions for removal and petitions for disqualification shall also be served on the workers' compensation administrative law judge from whose decisions or actions relief is sought. The workers' compensation administrative law judge may prepare a report which may contain any of the following:

(1) A statement of the contentions raised by the petitions.

(2) A discussion of the support in the record for the findings of fact and the conclusions of law which serve as a basis for the decision or order complained of, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in Rule 10452.

1 (3) The action recommended on the petition.  
2 (c) The workers' compensation administrative law  
3 judge shall serve a copy of the report prepared pursuant  
4 to subdivision (b) on the parties and any lien claimant,  
5 the validity of whose lien is specifically questioned by the  
6 petition for reconsideration or affected by the petition to  
7 remove or petition for disqualification, at the time the  
8 report is submitted to the appeals board.

